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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 AARON PALM, on behalf of himself and all
18 others similarly situated,

19 Plaintiffs,

20 vs.

21 SUR LA TABLE, INC., a Corporation, and
22 DOES 1-25

23 Defendants,
24

Case No. 12-cv-01250-JCS

**STIPULATION TO FILE FIRST
AMENDED COMPLAINT**

1 1. WHEREAS, on February 10, 2012 Plaintiff AARON PALM notified by certified mail
2 the California Labor and Workforce Development Agency ("LWDA") and Defendant SUR LA
3 TABLE, INC. of his intent to amend his complaint to add a cause of action for civil penalties
4 and attorney's fees pursuant to the California Private Attorneys General Act ("PAGA"), Cal.
5 Labor Code § 2698 *et seq.*, identifying the specific provisions of the Labor Code alleged to
6 have been violated including the facts and theories supporting the alleged violations;

7 2. WHEREAS, Plaintiff asserts that the LWDA has not provided notice to Plaintiff of its
8 intent to investigate the alleged violations within thirty-three days of Plaintiffs' notice;

9 3. WHEREAS, pursuant to Cal. Labor Code §2699.3(a)(2)(C), "a plaintiff may as a
10 matter of right amend an existing complaint to add a cause of action" for PAGA penalties
11 within sixty days of the LWDA's thirty-three day deadline;

12 4. WHEREAS, federal courts have held that section 2699.3(a)(2)(C) directly conflicts
13 with the Federal Rules of Civil Procedure regarding amendment (*see, e.g. De Simas v. Big*
14 *Lots Stores, Inc.* (N.D. Cal.) 2007 WL 686638), so the Federal Rules govern;

15 5. WHEREAS, Fed. R. Civ. Proc. 15(a)(2) provides that a party may amend its pleading
16 with the opposing party's written consent or with the court's leave, and courts shall freely
17 grant leave to file amended complaints, when justice so requires;

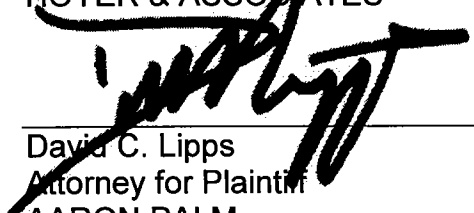
18 6. WHEREAS, Plaintiff provided to Defendant a copy of the proposed First Amended
19 Complaint, attached hereto as Exhibit 1, and Defendant has agreed to stipulate to its filing;

20 7. THEREFORE, THE PARTIES STIPULATE THAT Plaintiff may file the proposed First
21 Amended Complaint. The parties understand and agree that Defendant's stipulation does
22 not constitute an admission or acknowledgement as to the truth or validity of the claims
23 alleged in the First Amended Complaint.

8. THE PARTIES FURTHER STIPULATE THAT Defendant waives notice and service of the amended complaint and shall not be required to answer the amendment. In the event Defendant chooses not to respond to the amended complaint, all denials, responses, and affirmative defenses contained in the answer filed by Defendant to the original complaint shall be responsive to the amended complaint. However, in the event Defendant chooses to respond to the amended complaint, Defendant shall have 21 days after service of the amended complaint to answer or otherwise respond to Plaintiff's amended complaint. N.D. Cal. L.R. 6-1(a).

Date: March 20, 2012


HOYER & ASSOCIATES



David C. Lipps
Attorney for Plaintiff
AARON PALM

Date: 3/23/12

GIBSON, DUNN & CRUTCHER LLP



Michele L. Maryott
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Attorneys for Defendant
SUR LA TABLE, INC.

Dated: March 28, 2012

